

## V. Peacekeeping, Peacemaking, and Peace Enforcement\*

### RECOMMENDATION

**BE IT RESOLVED**, that the American Bar Association recommends that the United States Government support the creation by the United Nations, in addition to trained peacekeeping forces, of trained standby military forces for peacemaking and peace enforcement, composed of units from the national military forces of State Members of the United Nations, which would be available on call by the Security Council under conditions prescribed in agreements to be concluded pursuant to Article 43 of the United Nations Charter.

### REPORT

This recommendation is the fifth in a series of five recommendations which deal with important issues of international law that are crucial to the maintenance of international peace and security and justice. They have been developed by the Section of International Law and Practice, through its Working Group on Improving the Effectiveness of the United Nations, as a contribution of the American Bar Association to the 50th Anniversary of the United Nations, in fulfillment of the American Bar Association's Goal VIII—to advance the rule of law in the world. This recommendation addresses the issue of peacekeeping, with emphasis on the establishment of a standby military force composed of units from national military forces to be available on call by the Security Council under conditions carefully defined in agreements to be concluded pursuant to Article 43 of the United Nations Charter.

### Terminology

As used here: "Preventive diplomacy" is action to prevent disputes from arising between parties, to prevent existing disputes from escalating into conflicts and to limit the spread of the latter when they occur. "Peacekeeping" forces refers to lightly armed troops used to monitor, observe, report and act as a buffer with the consent of the parties. "Peace enforcement" forces refers to troops used to enforce or restore, sometimes without consent of the parties, observance of a peace or cease fire agreement; it also refers to troops used to deter or to stop aggression (sometimes referred to as "peacemaking" troops).<sup>1</sup> "Peace

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\*The members of the working group on peacekeeping, peacemaking, and peace enforcement are listed in Appendix A.

1. The line between these categories is not clear-cut. For example, forces protecting the delivery of humanitarian supplies are somewhere between peacekeeping and peace enforcing.

operations'' embraces operations of the type conducted by either or both such forces.

### **A. Settling Disputes Before Conflicts Turn Violent**

The methods available to the U.N. to promote peaceful settlement of disputes should be strengthened: (1) The monitoring of signs of tension should be improved to enhance the early warning system and facilitate early use of preventive diplomacy and other Chapter VI measures. Improved sharing by U.N. members of political and intelligence information may be all that is required. (2) Without institutionalization, the worldwide list of qualified potential factfinders and mediators, who are available to the Secretary-General and the Security Council, should be continuously updated for ready access and use.

### **B. Guidelines for Peacekeeping and Peace Enforcement Operations**

U.N. mandates and strategic military objectives should be more clearly stated and more effectively monitored by the Security Council and the Secretary-General. As discussed below, reinstatement of the Military Staff Committee could help to achieve this result.

The traditional guidelines for peacekeeping operations, which include consent of all parties and "observance" of the performance of U.N. resolutions, are adequate for traditional peacekeeping. However, the evolution of U.N. operations into situations requiring or potentially requiring the use of armed force (e.g., to protect delivery of humanitarian aid, maintaining law and order, protecting a right of passage), sometimes without the consent of the parties, calls for development of uniform military doctrine and of uniform rules of engagement tailored to different types of missions, and flexible enough to be adaptable for individual missions.

Uniform military doctrine for peace operations short of war is a starting point, to be followed by the development of rules of engagement, uniform interpretation of such rules, and standardization of procedures and tactical equipment. All are essential. Once these objectives are accomplished, uniform training manuals covering different types of peace operations can be prepared and uniform and combined training of units from different countries can effectively be conducted.<sup>2</sup>

Combined training of units should include units from all permanent members of the Security Council (U.S., Russia, U.K., France, China) as well as from other potential troop-furnishing states. Hopefully, this would involve a gradually

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2. The U.N. is developing a uniform training manual for traditional peacekeeping. In the area of peace operations including peace enforcement the U.S. Army has developed and is now using a Peace Operation Manual (FM 100-23) about to be issued in final form. Austria, Canada, and some Scandinavian countries have led the way in peacekeeping training.

There is, incidentally, an initiative between the U.S. Army and the Russian Army to establish some common guidelines as a framework for potentially combined peacekeeping operations.

increasing number of states and the full range of peace operations contemplated under the U.N. Charter.

### C. International Peace Institute

To facilitate meeting these important objectives an International Peace Institute and Training Center should be established. One possible site might be the unused Fort Dix facilities, as suggested by President Bush in 1992. From such an institution a cadre of staff-level individuals, uniformly trained in a wide range of peace operations, would emerge, capable of training troops in their own countries and in regional training centers. Combined training exercises might also be conducted at the Peace Institute.

Such an institute could also be a training center for services provided by nonmilitary U.N. personnel, e.g., for policing, election monitoring, refugee processing, human rights monitoring and conflict resolution.

The Institute could be owned and operated by the United Nations or privately owned and operated or a mix. A privately owned and operated facility would be more efficient and responsive to evolving needs.

The Institute could also be a training center for nongovernmental organizations involved in international humanitarian assistance operations. This in turn could lead to better harmonization of such operations with U.N. military and nonmilitary operations.

In any event expanded and continuous U.N. training programs and facilities are much needed.

### D.1. STANDBY MILITARY FORCES

The time is overdue for the creation of standby U.N. military forces for peace enforcement as well as peacekeeping now that the cold war no longer blocks the way. Creation of such forces would help substantially to promote and enforce the rule of law in international affairs. Article 43 of the U.N. Charter itself provides that members will make peace enforcement forces available on call by the Security Council under agreements to be negotiated.<sup>3</sup> The U.S. should take the lead in this respect.

The scope of such agreements would include the following: Numbers, types and capabilities of forces; training; degree of readiness; arms and equipment; location prior to call-up; logistical support; command; geographic limitations on use; length of deployment. Also, assistance, facilities, or rights of passage.<sup>4</sup>

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3. Peacekeeping forces, not mentioned in the U.N. Charter, are made available by *ad hoc* arrangement, as are other forces today.

4. Some members instead of providing forces may agree to provide financial, technical or other assistance, facilities or rights of passage. Model agreements should be developed for this purpose.

The need for such forces is acute because:

- Speed in deployment is essential once U.N. military action has been decided upon.
- The mere existence of standby forces acts as a deterrent to aggression and other unlawful actions.
- The U.N. is experiencing severe delays and increasing shortages in negotiating, deploying and funding troops, e.g., in Bosnia. Some countries are scaling back their operations. When directed to implement a Security Council decision, the Secretary-General should not be wholly dependent upon U.N. Members to volunteer the necessary troops.
- The existence of a standby force will help to furnish Security Council members with the political will to take firm action when that is required.

Had U.N. standby forces been available for preventive deployment on the Iran/Iraq border in 1980, or at the Iraq/Kuwait border in 1990, perhaps coupled with a U.N. show of force, the ensuing wars might well not have occurred. Had standby forces been readily available for rapid deployment in Angola during and after the 1992 elections, at the beginning of events in Somalia and in Bosnia, and in Haiti in 1993 after the Governor's Island Agreement and in Rwanda in 1994, the situations in each of those countries would almost certainly be different today.

Standby forces would be part of each Member's national military force when not called up for U.N. duty. They would include (a) peacekeeping forces; (b) rapid reaction forces for peace enforcement missions including preventive deployment; and (c) backup peace enforcement forces.

The U.N. Secretary General is currently securing indications from members of what they would be willing in principle to provide (troops or equipment or both) if asked. While this inventory of "building blocks" being compiled is a step in the right direction, it relates only to troops and equipment for peacekeeping. Also the degree of commitment to supply troops, and the state of training and of readiness of such troops are unlikely to equal those which would be provided under Article 43 agreements. Even if commitments of armed forces made under Article 43 agreements are limited or conditional, their existence will go far towards assuring the United Nations of ready access to trained peacekeeping and peacemaking troops available on relatively short notice.

A standing U.N. force, which some have suggested, would be unnecessarily costly and duplicative as long as standby forces are available and able to perform their duties effectively. The institutional framework for standby forces is already in place, namely existing national land, sea and air forces and Article 43.

The U.S. should be prepared to "do its share" of U.N. duty. This includes military service of all kinds. Any other course would signal abdication by the U.S. of its leadership role in the U.N.

Some may argue that troop commitments under Article 43 agreements would

unreasonably restrict a state's flexibility (1) not to take action, (2) to act to protect its interests in some fashion other than that adopted by the U.N., and (3) to act to protect its interests when it perceives that the U.N. has failed to do so.

In the United States, the U.S. veto right in the Security Council is the answer to (1) and (2). The U.S. can veto any proposed U.N. action of which it disapproves, including deployment of troops. Regarding (3), in any Article 43 agreement a member would presumably reserve the right to use any of its troops for self-defense under Article 51 or for national emergencies. As a practical matter this should, in large measure, answer (3). A state would, of course, remain free to use all its troops, less the number covered by its standby commitment. In deciding upon the number and type of its standby forces any country should take this factor into account. It, of course, remains free to increase the overall size of its military forces. To say that an Article 43 agreement would unreasonably restrict a state's flexibility is tantamount to rejection of the United Nations collective security system, and a continuation of today's inadequate ad hoc approach to every threat to international peace, breach of the peace or act of aggression.

## 2. SIZE, MAKEUP AND COST OF PEACE ENFORCEMENT FORCES

For peace enforcement, as a starting point, a relatively small rapid-reaction force of units, totaling, e.g. 6,000 troops, with armored capability should be organized. These troops should be trained uniformly to the same level of proficiency, including combined field exercises, and should be placed on standby under Article 43 agreements. Air and sea support would be included. For military effectiveness the units would come from a limited number of countries. However, as soon as the force is increased, the force composition should be broadened to include as many states as possible when their forces have been trained to a comparable level of performance, subject to overriding military efficiency requirements.

As to cost: Troops which a country agreed to make available to the U.N. on call would normally come from its national forces. When not on U.N. duty, they would not represent an additional defense cost to the troop-supplying country except for the cost of any special training not given to its other troops. This sum would be minimal.

When such troops are assigned to U.N. duty, under present procedures the U.N. would reimburse the troop-supplying government at standard U.N. rates. The supplying government would absorb any difference between actual costs and reimbursed costs.

Because the size, duration, nature of mission, geography, climate, etc. of every U.N. operation is different, it is not possible to suggest a cost figure for a "typical" U.N. operation. However, the estimated cost to the U.N. of deploying

a 6,000-man force with motorized and armored capability is in the order of \$120 million for a period of one year.<sup>5</sup>

### 3. VOLUNTEERISM

A study should be made whether, and to what extent it might be possible for standby forces, both peace enforcement and peacekeeping, to be composed of individuals who have expressly volunteered for U.N. duty. Troops composed of volunteers are likely to be more efficient and have a higher morale.<sup>6</sup> In the United States and perhaps elsewhere, such arrangement could diminish considerably political opposition to the use of U.N. troops when it is realized that they had expressly volunteered for U.N. missions.<sup>7</sup>

### 4. COMMAND

The U.N. Charter states, understandably, that "Questions relating to command of such forces should be worked out subsequently,"<sup>8</sup> since the mission and troop composition of each U.N. operation will be different.

Where units are predominantly from one country, the force commander should be from that country for obvious morale and efficiency reasons. When no one nation's forces predominate, operational command should be decided on a case-by-case basis, taking into account the type of operation, its complexity, the competency of any proposed U.N. operational commander and other factors. If a fully qualified competent non-U.S. operational commander is available, the U.S. commander-in-chief should be free to accept such a commander.

Article 43 agreements by governments furnishing troops can be expected to include a condition relating to command, possibly simply that operational command arrangements are to be agreed for each operation.

The NATO model provides a solid base for building a multinational command

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5. Memorandum of April 19, 1994, of R. Seitz, former Chief of Strategic Plans and Policy, U.S. Army, to H.F. Shattuck. Such force would include a brigade headquarters company, three infantry battalions capable of mounted (wheel or armored personnel carriers) or dismounted peace enforcement or peacekeeping operations, a tank battalion, an artillery battalion, a support battalion, an engineer company, a medical company, and a signal company. Sealift or airlift costs, costs depending on intensiveness of operations (fuel, ammunition), helicopter gunships, if any, are not included in this estimate.

6. Parenthetically it is time for nations to recognize better the sacrifice of those who put their lives on the line in the cause of peace. In the United States they should be rewarded no less than volunteers for the National Service Corps.

7. In the United States, after enlistment each enlistee could be given the opportunity to express his or her desire to be assigned as a matter of preference to U.N. duty when and if the occasion for such duty arises. (They are, of course, already subject to being ordered to U.N. duty.) Such duty could carry a pay incentive. Units of, say, battalion size composed of such volunteers would serve as part of the regular armed forces. In addition, they would be trained for U.N. assignments.

8. U.N. Charter Art. 47, para. 3.

structure. There the commander-in-chief for each major NATO command assigns strategic objectives and directions to the operational commanders of the several national units under him. (Such objectives may be geographic, functional or a mix.) Each unit commander has the operational command and responsibility for the planning function for his unit in achieving the objectives assigned by the major NATO commander. While maintaining responsiveness to the NATO operational chain of command, each national commander maintains communications with his national headquarters on any matter.<sup>9</sup>

Similarly, a U.N. Force Commander would assign strategic objectives to national unit commanders, e.g., battalion or higher level commanders, depending upon the size of the national contingent. Each unit commander would do the planning and have operational command in achieving his assigned objectives. Close coordination between and among national contingents and unit commanders is essential, as is true in any joint operation. The commander of any national unit would be allowed to communicate directly with his national headquarters on any matter.<sup>10</sup>

The possibility of incidents like the reported Italian refusal of an order in Somalia cannot be entirely avoided, but can be reduced substantially by improved U.N. mandates, by their improved translation into military terms,<sup>11</sup> by developing uniform military doctrines and rules of engagement, and by engaging in combined training over time.<sup>12</sup>

According to a summary of the Presidential Decision Directive (P.D.D.25), the President retains and will never relinquish command authority over U.S. forces. On a case-by-case basis the President will consider placing U.S. forces under the operational control of a competent U.N. commander for specific U.N. operations authorized by the Security Council. At the same time, the U.S. chain of command to those troops will remain intact.<sup>13</sup> Otherwise, the lack of a link between U.S. troops and their commander-in-chief would raise constitutional issues.

## 5. NO DEROGATION FROM POWERS OF PRESIDENT OR CONGRESS

The creation and use of standby forces does not derogate from powers of the President as Commander in Chief. The President must approve any request for troops by the U.N. under an Article 43 agreement and join in any decision as to their use. Both require a decision by the Security Council in which the President—

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9. Any multinational command entails at least two lines of command: operational command and administrative command.

10. The Military Staff Committee agreed on this principle in a 1947 report at the same time that it agreed on the principle of a force commander.

11. See Military Staff Committee discussion below.

12. It should be noted that the U.S. dead and wounded in Mogadishu, Somalia, in October 1993 were not the result of any U.N., multinational, or dual command structure. The U.S. Ranger force there was entirely under U.S. command.

13. U.S. Department of State, *The Clinton Administration's Policy on Reforming Multilateral Peace Operations* (DOS Pub. 10161, May 1994).

through the U.S. representative, whose vote he directs—already has a veto. As Commander in Chief he retains the right to recall them.

Congressional approval is not presently required. This was settled at the time of ratification of the U.N. Charter<sup>14</sup> and enactment of the United Nations Participation Act (U.N.P.A.). It provides that once Congress has approved an Article 43 agreement no further Congressional authorization is required before Article 43 forces are made available. However, if an Article 43 agreement should provide for a large multidivision army, e.g., a Desert Storm-size standby force, in approving the agreement Congress would be well advised to require the President to obtain Congressional approval, by a fast track procedure, prior to its use.

## 6. CONSULTATION

Consultation by the Executive Branch with Congress on peace operation matters has improved substantially. Because voters ultimately bear the cost in lives and funds and because of Congress' power of the purse such frequent consultation is to be encouraged. Such is the object of H.R. 3405, which is unobjectionable but not necessary. However, legislation the thrust of which would be to require express approval from Congress before the dispatch by the President of peace operation troops on any mission raises serious constitutional issues.

## 7. WAR POWERS RESOLUTION

As to the War Powers Resolution, Section 6 of the U.N.P.A. constitutes Congressional authorization of the introduction of armed forces into hostilities. Further, a joint resolution approving an Article 43 agreement would supersede any inconsistent provision of the Resolution. Nevertheless, when Congress approves an Article 43 agreement it would be advisable, for the avoidance of doubt, for it to reaffirm that no further authorization from Congress is required for the President to make such forces available and to deploy them.

## 8. INTERIM MEASURES TO BE TAKEN

Meanwhile, as urgent interim measures, until Article 43 agreements have been negotiated and concluded: (1) U.N. Members should inform the U.N. of the number of units potentially available and for what type or types of operations, and keep the U.N. advised of the status of such forces. They should also inform the U.N. as to potentially available equipment, facilities, and rights of passage. (2) The U.N. should expand its data on potentially available forces to include peace enforcing as well as peacekeeping troops. (3) Uniform peacekeeping and peace enforcement training programs should be promptly developed and started, as already discussed.

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14. See *War Powers and the U.N. Charter*. . . . A study of the history in the U.S. Senate of the U.N. Charter and U.N.P.A. of 1945 by David J. Schaffer, printed January 1, 1991, Hearing before the Committee on the Judiciary, U.S. Senate Serial No. J-102-1, pp. 17-25.



(4) Members should proceed to develop a small rapid-reaction standby force potentially available for use at the request of the Security Council.

### **E. Military Staff Committee**

The Military Staff Committee established in the Charter should be reactivated for the following purposes: providing general military advice to the Council and the Secretary General, when requested; assisting in the arrangements for furnishing military forces to the United Nations; pooling relevant intelligence information for the Security Council and the Secretary General; and monitoring arms control treaty and nonproliferation compliance. While not in the chain of command between the Security Council and force commanders, it would, on request, assist in the development of clearer and more realistic Security Council mandates and in the translation of objectives mandated by the Security Council into strategic military objectives. Troop-furnishing countries should be encouraged to participate in the Military Staff Committee.

### **F. Role of Regional Organizations**

Since the end of the Cold War the Organization of American States has been active in efforts to settle disputes over, or in, such places as Nicaragua, Haiti, and El Salvador. Similarly, the Conference on Security and Cooperation in Europe has established mechanisms for resolving local conflicts. NATO and the Organization of African Unity are cooperating with the United Nations in resolving conflicts in Bosnia and Rwanda. Such efforts greatly contribute to the maintenance of international peace and security and relieve the United Nations, in whole or in part, of its burdens in various regions.

The authority of regional arrangements and agencies under Chapter VIII of the U.N. Charter, however, is limited to the peaceful settlement of local disputes. Under Article 53, with the exception of measures against the enemy states of World War II, "no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council."

There has been substantial debate over the scope of the terms "enforcement action," and the issue has not been authoritatively resolved. The Security Council in any event has the power to authorize any use under regional arrangements of military forces for any action other than peacekeeping.

### **G. Financial Arrangements**

The United States should support the recommendation of the Ogata/Volker Report that the U.N. establish an enlarged revolving fund of \$400 million. This will enable the U.N. to fund start-up costs of several large missions at one time as happened in 1992 (in Cambodia, Yugoslavia, Somalia and Mozambique), without the delay of awaiting assessed peacekeeping contributions. The United

States should also endorse the report's recommendations for an annual peacekeeping budget, a regular appropriation for peace operation training, and the granting of authority to the Secretary-General to commit up to 20% of the cost of an operation once the Security Council has approved it. It goes without saying that all Members, including the U.S., should pay both regular and peacekeeping assessments in more timely fashion.

The financing of peace operations, including budgeting, funding and assessments, should be the subject of a separate attention at a special session of the General Assembly, an international conference or a summit meeting.

## **H. Protection of Peace Operations**

On the initiative of New Zealand and the Ukraine, an ad hoc committee of the Sixth Committee of the General Assembly was established with the task of developing an international convention to protect international peace operations. An unfortunate lacuna exists in this area of international law. At the 49th session of the General Assembly at the end of 1994, the United States should support the adoption of a convention that would provide for the punishment of attacks on the life and liberty of U.N. personnel and of the personnel of nongovernmental organizations working for or with the United Nations. Such a convention should be promptly signed and ratified by U.N. members.

Respectfully submitted,  
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Chair

August 1994

## **Appendix A—Members of Working Group**

### **I. International Court of Justice**

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\*An earlier, more limited version of Mr. Shattuck's report was published in The Record of the Association of the Bar of the City of New York (Dec. 1993, pp. 981-92).